IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CWP No. 135 of 2006

**Date of decision: 26.3.2007**

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Anil Vekta — Petitioner

**Versus**

State of H P & others — Respondents

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*Coram:*

**The Hon'ble Mr.Justice Deepak Gupta, J.**

**The Hon'ble Mr Justice Surinder Singh, J.**

*Whether approved for reporting ?*[1]

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| **For the Petitioner:** | **Mr YPS Dhaulta, Advocate.** |
| **For respondents 1 & 3:** | **Mr M S Chandel, Advocate General, With Mr R M Bisht, Deputy Advocate General.** |
| **For respondent No.2** | **Mr B N Misra, Advocate.** |

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Deepak Gupta,J. (Oral)

The short question involved in this petition revolves around the interpretation to be given to sub-clause (1) of Rule 84-A of the Himachal Pradesh Panchayati Raj (Election) Rules,

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ?***

1994. The relevant portion of the rule reads as follows:

> **"84-A.Meeting for election.-** (1) As soon as possible but not later than seven days after the oath or affirmation of allegiance under sub-rule (2) of rule 22 of the Himachal Pradesh Panchayati Raj (General) Rules, 1997 is administered or made to the members of the Gram Panchayat by its Pradhan on the day of the first meeting of the Gram Panchayat, the Sub Divisional Officer (Civil) concerned or any other officer authorized by him in this behalf, except Panchayat Secretary shall call under his presidentship (hereinafter referred to as Presiding Officer) a meeting of all elected members of Gram Panchayat to elect one of its members to be the Up-Pradhan of the Gram Panchayat".

The undisputed facts are that elections to various wards of Gram Panchayat

*Devarighat* were held sometime in December, 2005. It is not disputed that there were seven wards in this Panchayat. Ward No.3 was reserved for schedule caste. Elections to Ward No.3 could not be held because no person actually contested the election, though some persons had filed nomination papers but later on they withdrew their candidature. As such, there was no candidate from this Ward. Thereafter, elections for the post of Pradhan of the Panchayat were held which were not challenged. Elections to post of Up-Pradhan were fixed for 30.01.2006. The present petitioner filed the present petition on 27th January, 2006. The contention raised by Sh. YPS Dhaulta, Advocate, is that Sub Divisional Officer(Civil) or any other officer duly authorized by him in terms of sub rule (1) of Rule 84-A of the Act is bound to call a meeting of <u>all elected members</u> of Gram Panchayat to elect one of its members to be the Up-Pradhan of the Gram Panchayat. According to Mr.YPS Dhaulta, Advocate, no ward election to Ward No.3 had taken place as nobody had fought the election, therefore, when the authorized officer called the

meeting, he had not called the meeting of all the elected members.

We are not at all in agreement with this contention raised by Sh. YPS Dhaulta, learned counsel for the petitioner. The phrase "all the elected members" obviously means members who have been elected to the Panchayat. If any, ward remains unrepresented there is no elected member from that ward. An unrepresented Ward does not fall within the meaning of phrase "all elected members".

There can be various occasions, when the election to a particular Ward cannot be held. The whole election process to the higher office cannot be brought to grinding halt just because elections to one of the wards has not taken place. In case any other interpretation is given to the phrase "all elected members" it would result in a situation of leaving the higher office vacant for long period of time. This was not and could never have been the intention of the Legislature. In fact the word "elected" as used in the phrase "all elected persons" clearly shows that only those

persons who have been duly elected have to be called for the meeting.

Keeping in view the above discussion, there is no merit in this petition, which is accordingly dismissed. No order as to costs.

(Deepak Gupta),J.

March 26, 2007 (Surinder Singh),J.
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